



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 3041-99

5 April 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Sub: EX-CAPT [REDACTED], USMC, [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Enc: (1) DD Form 149 dtd 3 May 99 w/attachments  
(2) Counsel e-mail dtd 1 Apr 00  
(3) Counsel ltrs dtd 10 and 17 May 99, each w/encl  
(4) HQMC JAM3 memo dtd 27 Aug 99  
(5) Counsel ltr dtd 4 Nov 99  
(6) HQMC JAM3 memo dtd 10 Jan 00  
(7) Counsel ltr dtd 10 Feb 00  
(8) Memo dtd 8 Mar 00 w/encl (case file of LtCol F)  
(9) Memo for record dtd 15 Mar 00  
(10) Memo for record dtd 15 Mar 00  
(11) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that his naval record be corrected by removing all documentation of his removal from the report of the Fiscal Year (FY) 1996 Marine Corps Major Selection Board and his removal from the report of the FY 1997 Marine Corps Reserve Major Selection Board. Copies of such documents appearing in Petitioner's Official Military Personnel File are at Tab A. He further requested that his name be submitted to the President "for nomination for promotion so that the Senate may determine whether to advise and consent on his promotion to the grade of Major USMCR [United States Marine Corps Reserve]." It is noted that title 10 U.S.C., section 12203(a) provides that such promotions shall be made by the President alone. In the alternative, he requested that on removal of the documentation of his removals from the selection board reports, he be presented to the next Marine Corps Reserve major selection board as an officer who has not failed of selection to the grade of major, Marine Corps Reserve. The FY 2001 Marine Corps Reserve Major Selection Board, which is the next Marine Corps Reserve major selection board scheduled to convene after 3 May 1999, the date of Petitioner's application, is to convene on 18 April 2000. As a result of his removal from the report of the FY 1997 Reserve Major Selection Board and his failure by the FY 1999 Reserve Major Selection Board, he was discharged from the Marine Corps Reserve on 1 June 1999 (he was not considered by either the FY 1998 or the FY 2000 Marine Corps

Reserve Major Selection Board). The relief he expressly requested implied a further request that his record be corrected further to show he was not discharged from the Marine Corps Reserve on 1 June 1999, but has served in the Marine Corps Reserve continuously after that date. By e-mail of 1 April 2000 (enclosure (2)), submitted after the Board had considered Petitioner's case, Petitioner's counsel stated that his client would like to have his record corrected to reflect he was promoted by either the FY 1996 Marine Corps Major Selection Board or the FY 1997 Marine Corps Reserve Major Selection Board; however, if neither of these remedies is approved, he would request to be considered "in zone" by the FY 2001 Marine Corps Reserve Major Selection Board.

2. The Board, consisting of Ms. Humberd and Messrs. Tew and Zsalman, reviewed Petitioner's allegations of error and injustice on 15 March 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures less enclosure (2), naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner, a former naval aviator, attended the 1991 Tailhook Symposium in Las Vegas, Nevada, from 5 to 7 September 1991. His former squadron, Marine Fighter Photograph Reconnaissance Squadron Three (VMFP-3), which had the rhinoceros (rhino) as their mascot, sponsored a hospitality suite ("Rhino Suite"), in which a mural of a rhino with a plastic phallus to dispense alcoholic beverages was located. On the evening of Saturday, 7 September 1991, Petitioner was the bartender in the hospitality suite for approximately two hours. Throughout the weekend, he observed approximately 12 women drink alcoholic beverages by simulating oral sex on the rhinoceros phallus. He also observed two or three of the women "deep throat" the phallus, and he participated by marking the phallus with a ballpoint pen. By his own account, all the actions by the women in the hospitality suite throughout the weekend were voluntary. His statement is at Tab 1 to enclosure (1).

d. As a result of his alleged misconduct at the Tailhook Symposium, Petitioner personally appeared before the Consolidated Disposition Authority (CDA), then Lieutenant General [REDACTED], United States Marine Corps. In his letter dated 12 August 1993 (Tab 3 to enclosure (1)), [REDACTED] stated the following:

1...Following a thorough review [of the Department of Defense Inspector General investigation of the Tailhook 1991 Symposium], and a discussion with [Petitioner] concerning the circumstances surrounding this matter, I

concluded that the allegation is completely without merit and that no basis for imposing punishment under Article 15, UCMJ [Uniform Code of Military Justice], exists, nor is any lesser form of administrative action warranted.

2. Promotion Recommendation. I recommend that [Petitioner's] promotion eligibility be fully restored and he be considered for advancement on schedule. I further recommend that he be permitted to compete on an equal basis for any and all career enhancing opportunities available to officers of his rank and experience...

e. Petitioner was selected by the FY 1996 Marine Corps Major Selection Board. This selection board was not aware of his participation in the 1991 Tailhook Symposium. By letter dated 22 September 1995 (Tab 4 to enclosure (1)), then General [REDACTED], acting as the Commandant of the Marine Corps (CMC), recommended to the Secretary of the Navy (SECNAV) that Petitioner be removed from the report of the FY 1996 Marine Corps Major Selection Board. The CMC stated the following:

...  
3...[Petitioner] contends that his prior conduct was addressed and resolved by me as the...[CDA] and that removal from the [FY 1996] Board Report would be inconsistent with my earlier disposition of the allegation against him. As the CDA, I determined that there was no violation of the UCMJ by [Petitioner] and elected not to take judicial action. I believe that action was correct. As the [CMC], I look at the totality of [Petitioner's] conduct at the 1991 Tailhook Symposium through a different lens and find his conduct not representative of the high standards and moral repute the nation expects in her Marine officers. Accordingly, I cannot support his promotion to the grade of major...

SECNAV approved the CMC recommendation on 10 October 1995. By letter dated 20 October 1995, the Deputy Secretary of Defense (DSD) recommended to the President that Petitioner be removed from the report of the FY 1996 Major Selection Board, and on 2 November 1995, the President approved the DSD recommendation.

f. On 1 August 1995, Petitioner resigned from the Regular Marine Corps to pursue a master's degree in business administration. He accepted a commission as a captain in the Marine Corps Reserve. He was selected by the FY 1997 Reserve Major Selection Board. His record before this selection board included documentation of his removal from the report of the FY 1996 Marine Corps Major Selection Board, such documentation reflecting his involvement in the 1991 Tailhook Symposium. By letter dated 6 January 1997 (Tab 7 to enclosure (1)), CMC recommended to SECNAV that Petitioner be removed from the report of the FY 1997 Marine Corps Reserve Major Selection Board. On 4 February 1997, SECNAV approved the CMC recommendation. By letter dated 14 March 1997, the DSD recommended to the President that Petitioner be removed from the report of the FY 1997 Marine Corps Reserve Major Selection Board Report, and on 26 March 1997, the President approved this recommendation.

g. Documentation of Petitioner's removal from the FY 1996 and 1997 selection board reports was on file in his naval record when he was considered and failed of selection by the FY 1999 Marine Corps Reserve Major Selection Board. By reason of his removal from the FY 1997 report and his FY 1999 failure, he was discharged from the Marine Corps Reserve on 1 June 1999.

h. Regarding his removal from the report of the FY 1996 Marine Corps Major Selection Board, Petitioner, through his counsel, argues that the CMC misled SECNAV in his memorandum dated 22 September 1995, described in paragraph 3.e above. He notes that as the CDA, [REDACTED] made the finding in his letter of 12 August 1993, described in paragraph 3.d above, that the allegation of misconduct by Petitioner at the 1991 Tailhook Symposium "...is completely without merit and that no basis for imposing punishment under Article 15, UCMJ, exists, nor is any lesser form of administrative action warranted." Counsel further notes that the memorandum to SECNAV of 22 September 1995, when the former CDA was acting as the CMC, stated that as the CDA he determined only that "there was no violation of the UCMJ" by Petitioner and that he "...elected not to take judicial action." Counsel argues that the CMC was bound by his factual finding, as the CDA, that the allegation against Petitioner was "completely without merit" and that there was "no basis" for Article 15 punishment or "any lesser form of administrative action." Counsel contends that the CMC letter of 22 September 1995 further misled SECNAV by failing to inform him that as the CDA, he had found that no lesser form of administrative action was warranted. Counsel contends that Marine Corps officer standards had not changed from 1993, when then [REDACTED], as the CDA, had found no misconduct on Petitioner's behalf, to 1995, when [REDACTED] as CMC, found misconduct. Concerning Petitioner's removal from the report of the FY 1997 Marine Corps Reserve Major Selection Board, counsel argues that the CMC misled SECNAV by stating, in his letter of 6 January 1997, that Petitioner saw between 10 and 12 women drink from the rhino phallus when he was tending bar, where he actually saw this over the course of two evenings. He further maintains that this letter contained the same kind of misleading information as that in the letter of 22 September 1995 about the position taken as CDA. Counsel also makes a disparate treatment argument regarding the former squadron commander, then Lieutenant Colonel [REDACTED] who attended the 1991 Tailhook Symposium. Counsel contends that LtCol F's involvement with the Rhino Suite was similar to his client's, but LtCol F received no Article 15 punishment from [REDACTED] was selected for promotion to colonel and was promoted to that grade (on page 4 of his brief, he says LtCol F was selected by the FY 1995 Colonel Selection Board; on page 9, he says it was the FY 1996 Colonel Selection Board). Counsel argues that as a Marine more senior than his client, LtCol F should have been held to a higher standard than his client, not a lower one.

i. By correspondence at enclosure (3), Petitioner's counsel forwarded a supporting letter from a retired lieutenant colonel. This officer states that he attended the 1991 Tailhook Symposium and was aware of the rhino drink dispenser. He also states that many officers senior to Petitioner were present and that if anything inappropriate was occurring, they should have stopped it. He says that as he was helping to clean up [REDACTED], a female naval officer approached him and said that it was the "'best suite'" at the symposium. He

concludes that he knew Petitioner professionally from 1988 to 1991, and that he never observed Petitioner conduct himself in an inappropriate manner.

j. In correspondence attached as enclosure (4), the Headquarters Marine Corps (HQMC) Military Law Branch, Judge Advocate Division (JAM3) concluded that Petitioner's request should be denied. This advisory opinion, after providing a summary of the events that transpired at the Tailhook Symposium, stated the following:

4.b. Petitioner is correct that the memoranda of 22 September 1995 and 6 January 1996 [sic] did not recite verbatim [redacted] findings and recommendations as CDA. However, verbatim recitation of language from prior correspondence into subsequent memoranda is not required by law, regulation or fairness. CMC is permitted to make a recommendation concerning the fitness of Marine Corps officers for promotion. He did so. Both memoranda as a whole accurately convey that although [redacted] as CDA did not believe that Petitioner committed an offense under the UCMJ, as CMC he believed that [Petitioner's] conduct fell far below the standards of a Marine major. There is nothing in this clear distinction that may have misled [SECNAV], as Petitioner argues.

c. [redacted] as CDA did not find that Petitioner violated the UCMJ. This finding, however, did not mean that Petitioner was automatically qualified for promotion, nor did it bind [redacted] to make a favorable promotion recommendation. As CMC [redacted] viewed Petitioner's conduct from a different perspective than while he was the CDA, and according to a different standard.

d. The decision in Petitioner's case to remove his name from the promotion list [sic] was based upon individualized consideration of the specific facts of his case. The removal process was correctly performed according to law and regulation. The disposition of another case with different facts is not relevant, and is not a basis for relief...

k. Enclosure (5) is Petitioner's counsel's rebuttal statement to the advisory opinion from the HQMC JAM3 at enclosure (4). Counsel contended that Petitioner did not in any way participate in the fabrication of the rhino drink dispenser, but asserted that [redacted] did. Counsel also maintained that Petitioner was bartender in the Rhino Suite on only one evening, and that he never admitted to measuring how much of the phallus the women were able to put in their mouths while he was a bartender. Concerning the statement, in the advisory opinion, that several women were sexually assaulted during the 1991 Tailhook Symposium, counsel replied that while this was true, it was totally irrelevant to Petitioner's case, as he has never been suspected of having committed such assaults. Counsel noted that although verbatim recitation from prior correspondence is not required, as a matter of fairness and justice, it was required in this case. Counsel argued that the case of a Navy commander had a negative

impact on the review of Petitioner's case. He also argued that once the [REDACTED] as the CDA, made a finding of fact that Petitioner's alleged misconduct was "completely without merit" [REDACTED] as the CMC, was bound by this finding, absent evidence supporting reversal of the finding. Counsel argued the Board should be informed of the difference JAM3 finds between the perspective and standards applied by [REDACTED] as the CDA, and [REDACTED] as the CMC, in assessing Petitioner's fitness for promotion. Counsel concluded that LtCol F, as a more senior officer than Petitioner, received disparate treatment, since he alleged that LtCol F was present in the Rhino Suite when misconduct occurred, and yet he was promoted to colonel. Counsel requested that the records relating to the promotion of LtCol F be obtained by this Board. As indicated at paragraph 3.n below, such documentation was obtained. However, it was not provided to Petitioner or his counsel on the bases that disclosure to them would constitute an unwarranted invasion of LtCol F's privacy, and that HQMC Judge Advocate Division was the proper releasing authority.

l. In correspondence attached as enclosure (6), the HQMC JAM3 provided a second advisory opinion in Petitioner's case. They again found relief should be denied. This advisory opinion responded specifically to counsel's argument that Petitioner received harsher treatment than LtCol F for similar misconduct, stating the following:

4. Analysis. This argument is without merit. The removal process in Petitioner's case was performed correctly according to law and regulation. Moreover, the decision to remove Petitioner's name from the FY96 and FY97 selection board reports were [sic] based on facts unique to his case and record of service. Comparison of actions in this case to those in another case are [sic] neither required by statute or regulation nor appropriate given the unique circumstances presented by each case; therefore, such comparison does not further the interests of justice...

m. Enclosure (7) is Petitioner's counsel's rebuttal statement to the HQMC JAM3 advisory opinion at enclosure (6). Counsel again argued that Petitioner had received harsher treatment than LtCol F. He stated that [REDACTED] "was not disciplined in any way" nor was he removed from the colonel promotion list. Counsel attributed such disparate treatment to the following alleged "distinguishing factor":

LtCol F, unlike [Petitioner], dropped to his knees at the CDA hearing and told [REDACTED] that he desired to pray for forgiveness. [REDACTED] joined [LtCol F] in prayer. Since [LtCol F's] CDA hearing, the Marine Corps has made every effort to suppress reports about this "prayer meeting" masquerading as a disciplinary hearing. [LtCol F's] show of religiosity was a clear and successful effort to manipulate the well-known [sic] religious fervor of the CDA, LTG [sic] [REDACTED]

Counsel contended that this is "apparent religious discrimination" which violates the Constitution and Navy standards regarding "discrimination based on religious

affiliation/practices." He alleged that as a result of this discrimination, LtCol F "suffered no administrative consequences at all." Counsel requested that the file on LtCol F's CDA hearing be considered by this Board.

n. Enclosure (8) is the file on the disposition of LtCol F's involvement in the 1991 Tailhook Symposium. It shows LtCol F was found to have engaged in conduct that made Petitioner's appear minor by comparison. It further shows Petitioner's counsel was incorrect in asserting that no administrative action was taken against LtCol F. Finally, this file includes no evidence supporting counsel's allegation of a "prayer meeting" involving LtGen [REDACTED]

o. The memorandum for the record at enclosure (9) shows that a member of the Board's staff contacted the HQMC Promotion Branch (MMPR) and was informed that had Petitioner been promoted pursuant to selection by the FY 1997 Marine Corps Reserve Major Selection Board, he would have been assigned a date of rank and effective date of 1 July 1996.

p. The memorandum for the record at enclosure (10) shows that a member of the Board's staff contacted the HQMC MMPR and was advised that LtCol F was selected by the FY 1994 Marine Corps Colonel Selection Board, and that he was promoted to colonel with a date of rank and effective date of 1 September 1994.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosures (4) and (6), the Board finds that relief is warranted.

The Board finds all documentation of Petitioner's removal from the report of the FY 1996 Marine Corps Major Selection Board and his removal from the report of the FY 1997 Marine Corps Reserve Major Selection Board should be removed from his naval record. In this regard, the Board in no way condones Petitioner's actions at the 1991 Tailhook Symposium. However, they find it patently unfair that although his role was minor in comparison to that of LtCol F, a more senior officer, he received harsher treatment, in that LtCol F was allowed to have his promotion to colonel and retire in that grade, while Petitioner's promotion to major was killed. They particularly note that the FY 1997 Marine Corps Reserve Major Selection Board selected Petitioner for promotion with full knowledge of his involvement at the 1991 Tailhook Symposium.

For these same reasons, they find that the President should be urged to rescind his action to remove Petitioner from the report of the FY 1997 Marine Corps Reserve Major Selection Board, so that his record may be corrected to reflect he was promoted pursuant to selection by that board. In light of the memorandum at enclosure (9), they find that this record correction should show his major date of rank and effective date as 1 July 1996. They do not feel he should have the benefit of his FY 1996 selection, as he does have "unclean hands" in

terms of equity, and there is no indication that the FY 1996 Marine Corps Major Selection Board was aware of his actions at Tailhook.

The Board finds that Petitioner's failure of selection by the FY 1999 Marine Corps Reserve Major Selection Board should be removed. Because they recommend purging his record of the documentation of his removal from the reports of the two promotion boards, and his record before the FY 1999 Selection Board included that highly prejudicial material, they conclude that board could not have afforded him fair and equitable consideration.

The Board further finds that Petitioner's discharge from the Marine Corps Reserve should be set aside retroactively. In this connection, they note that this discharge was by reason of his removal from the FY 1997 report and his FY 1999 failure of selection; that they recommend striking the FY 1999 failure; and that they further recommend urging the President to rescind Petitioner's removal from the FY 1997 report.

In view of the above, the Board recommends the following corrective action:

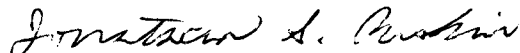
**RECOMMENDATION:**

- a. That Petitioner's naval record be corrected by removing all documentation of his removal from the report of the FY 1996 Marine Corps Major Selection Board and his removal from the report of the FY 1997 Marine Corps Reserve Major Selection Board.
- b. That Petitioner's naval record be corrected to show that he did not fail of selection by the FY 1999 Marine Corps Reserve Major Selection Board.
- c. That Petitioner's record be corrected further to show he was not discharged from the Marine Corps Reserve on 1 June 1999, but has served in the Marine Corps Reserve continuously after that date.
- d. That the Secretary of the Navy recommend to the President that he rescind the action of removing Petitioner from the report of the FY 1997 Marine Corps Reserve Major Selection Board, so that his naval record may be corrected under reference (a) to show that he was promoted to major in the Marine Corps Reserve, with a date of rank and effective date of 1 July 1996, and his lineal precedence may be adjusted accordingly.
- e. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.
- f. That any material directed to be removed from Petitioner's naval record be returned to this Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

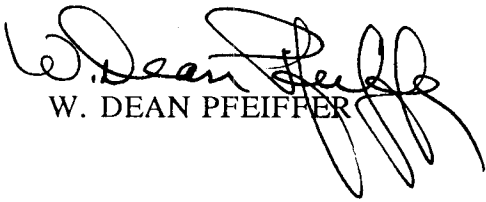


4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

  
JONATHAN S. RUSKIN  
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

  
W. DEAN PFEIFFER

Reviewed and approved:



DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
1000 NAVY PENTAGON  
WASHINGTON, D.C. 20350-1000

3041-99

JUL 11 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: REVIEW OF NAVAL RECORD OF EX-CAPT [REDACTED], USMC,  
[REDACTED]

I have considered the recommendation of the Board for Correction of Naval Records (BCNR) that petitioner's record be corrected in various ways to effect petitioner's reinstatement and promotion to major in the Marine Corps Reserve. For the reasons that follow, the BCNR's recommendation is disapproved and relief is denied.

Petitioner's name was removed from the reports of the FY 1996 Marine Corps Major Selection Board and the FY 1997 Marine Corps Reserve Major Selection Board at the recommendation of the Secretary of the Navy because of petitioner's behavior at the 1991 Tailhook Symposium. In his petition, petitioner admits that he personally engaged in the conduct that formed the basis for the Secretary's actions. Nevertheless, he contends that it was unfair to deny his promotion to major because another officer, who arranged for the hotel suite where petitioner's behavior occurred, was promoted to colonel and allowed to retire. The BCNR agreed and recommended granting relief.

I do not agree that the Secretary's actions in petitioner's case were unfair. Petitioner admitted to egregious behavior that clearly established his unfitness for promotion. There is no evidence that the other officer cited by the BCNR was personally engaged in the same behavior as petitioner or that his personal behavior during the Tailhook Symposium was otherwise comparable to petitioner's. Even if it were, the fact that another officer may have avoided the full measure of accountability for his behavior at Tailhook does not make it unfair or unjust for the Secretary to take entirely appropriate actions to assess accountability in this case or others. Relief is denied.

[REDACTED]

Assistant Secretary of the Navy  
(Manpower and Reserve Affairs)



**DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775**

IN REPLY REFER TO:

1070

JAM3

27 AUG 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION

1. We are asked to provide an opinion on Petitioner's request for expungement from his official record of all documents relating to his removal from the FY96 Major USMC and FY97 Major USMCR Selection Lists. Petitioner also requests immediate submission of the expunged record to the President for nomination and promotion to the grade of Major USMCR. In the alternative, Petitioner requests that the expunged record be submitted to the next Major USMCR promotion board for consideration for promotion to Major.

2. We recommend that the requested relief be denied. Our analysis follows.

### 3. Background

a. On 5-7 September 1991, the Tailhook Association conducted its annual Symposium at the Las Vegas Hilton. On the third floor of the Hilton, approximately 22 "hospitality suites" were set up by some of the squadrons attending the event. Members of Marine Fighter Photo Reconnaissance Squadron Three (VMFP-3) organized the "Rhino Suite", a room containing a mural of the squadron mascot with a mock phallus as a drink dispenser.

b.. On 6 and 7 September 1991 Petitioner attended the Symposium and visited the "Rhino Suite." On each occasion, Petitioner acted as a bartender for "a couple of hours" and became very intoxicated. Petitioner also stated that during these evenings he visited the room and observed 10 to 12 women simulate fellatio on the rhino in order to obtain a drink. Petitioner also said that he observed 2-3 women "deep throat" the rhino and marked the depth with a pen. In addition, during the course of the event several military and civilian women reported being sexually assaulted. A criminal investigation was conducted into the activities at the symposium, and a number of Marine Corps and Navy officers were identified as suspects.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF CAPTAIN [REDACTED]

c. In 1993, the Marine Corps officers suspected of misconduct were brought before (then) LtGen [REDACTED] who had been designated as the consolidated disposition authority (CDA) for the Tailhook cases. Petitioner's case was considered by the CDA, who determined that the allegation was without merit and imposed no punishment. The CDA also recommended that Petitioner's promotion eligibility be restored and that he be considered for promotion along with his peers in the future.

d. In 1995, Petitioner was considered and selected by the FY 1996 Major USMC promotion Board. As Commandant of the Marine Corps (CMC), Gen Krulak recommended to the Secretary of the Navy (SecNav) and the President that the Petitioner's name be removed from the FY 1996 Major promotion list. SecNav concurred in the recommendation and the President removed Petitioner's name from the promotion list. The Petitioner resigned his commission effective 1 August 1995, and remained in the reserve component. Petitioner was then considered and selected by the FY 1997 Major USMCR Promotion Board. Following the recommendations of CMC and SecNav, the President again removed Petitioner's name from the FY 1997 USMCR Major promotion list.

#### 4. Analysis

a. Petitioner presents three arguments in support of his petition. First, he maintains that [REDACTED]'s recommendations in his memoranda of 22 September 1995 and 6 January 1996 to SecNav concerning removal of Petitioner's name from the FY96 Major USMC and the FY97 Major USMCR Promotion Board Report were false and misleading. In particular, Petitioner alleges that the omission of a verbatim recital of the CDA findings in these memoranda constitutes prejudicial error. Second, Petitioner maintains that recommendations made by [REDACTED] CMC were unfair in light of his previous actions as CDA. Third, Petitioner claims that his removal from the FY96 USMC and FY97 USMCR promotion lists for his conduct at the symposium was unfair compared to the treatment of one of the more senior officers at the event. None of these allegations provide a basis for the requested relief.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF CAPTAIN [REDACTED] USMCR

b. Petitioner is correct that the memoranda of 22 September 1995 and 6 January 1996 did not recite verbatim [REDACTED] findings and recommendations as CDA. However, verbatim recitation of language from prior correspondence into subsequent memoranda is not required by law, regulation or fairness. CMC is permitted to make a recommendation concerning the fitness of Marine Corps officers for promotion. He did so. Both memoranda as a whole accurately convey that although LtGen [REDACTED] as CDA did not believe that Petitioner committed an offense under the UCMJ, as CMC he believed that Captain [REDACTED] conduct fell far below the standards of a Marine major. There is nothing in this clear distinction that may have misled SecNav, as Petitioner argues.

c. [REDACTED] as CDA did not find that Petitioner violated the UCMJ. This finding, however, did not mean that Petitioner was automatically qualified for promotion, nor did it bind Gen [REDACTED] as CMC to make a favorable promotion recommendation. As [REDACTED] reviewed Petitioner's conduct from a different perspective than while he was the CDA, and according to a different standard.

d. The decision in Petitioner's case to remove his name from the promotion list was based upon individualized consideration of the specific facts of his case. The removal process was correctly performed according to law and regulation. The disposition of another case with different facts is not relevant, and is not a basis for relief.

5. Conclusion. Accordingly, for the reasons noted, we recommend that the requested relief be denied.

[REDACTED]

Assistant Head  
Military Law Branch  
Judge Advocate Division



3041-99

**DEPARTMENT OF THE NAVY**  
**HEADQUARTERS UNITED STATES MARINE CORPS**  
**2 NAVY ANNEX**  
**WASHINGTON, DC 20380-1775**

IN REPLY REFER TO:

1070  
JAM3  
10 JAN 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF CAPTAIN [REDACTED]  
USMCR

1. We are asked to provide an opinion on Petitioner's answer to our initial advisory opinion of 5 October 1999.

2. We continue to recommend that the requested relief be denied. Our analysis follows.

3. Background. On 3 May 1999, Petitioner filed an application with BCNR for removal from his Official Military Personnel File (OMPF) of all documents relating to his removal from the FY96 Major USMC and FY97 Major USMCR selection board reports. Petitioner also requested submission of the expunged record to the President for nomination and promotion to the grade of Major USMCR. Petitioner made three arguments in support of his application for relief. On 27 August 1999, we advised the Board that none of Petitioner's allegations provide a basis for relief. On 4 November 1999, Petitioner responded to our advisory opinion, reiterating arguments made in his 3 May 1999 application. Petitioner also raised the argument that the board must consider the disposition of the related case of [REDACTED] U.S. Marine Corps (Ret.) in deciding whether to grant relief in Petitioner's case. We rely on our previous opinion with respect to issues discussed therein. We comment briefly on the argument regarding Colonel [REDACTED] case.

4. Analysis. This argument is without merit. The removal process in Petitioner's case was performed correctly according to law and regulation. Moreover, the decision to remove Petitioner's name from the FY96 and FY97 selection board reports were based on facts unique to his case and record of service. Comparison of actions in this case to those in another case are neither required by statute or regulation nor appropriate given the unique circumstances presented by each case; therefore, such comparison does not further the interests of justice.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF CAPTAIN [REDACTED] OF  
USMCR

5. Conclusion. We continue to recommend that the relief be  
denied.

[REDACTED]  
[REDACTED]  
[REDACTED]

Head, Military Law Branch  
Judge Advocate Division



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070

JAM3

27 AUG 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF CAPTAIN [REDACTED] USMCR

1. We are asked to provide an opinion on Petitioner's request for expungement from his official record of all documents relating to his removal from the FY96 Major USMC and FY97 Major USMCR Selection Lists. Petitioner also requests immediate submission of the expunged record to the President for nomination and promotion to the grade of Major USMCR. In the alternative, Petitioner requests that the expunged record be submitted to the next Major USMCR promotion board for consideration for promotion to Major.

2. We recommend that the requested relief be denied.  
Our analysis follows.

3. Background

a. On 5-7 September 1991, the Tailhook Association conducted its annual Symposium at the Las Vegas Hilton. On the third floor of the Hilton, approximately 22 "hospitality suites" were set up by some of the squadrons attending the event. Members of Marine Fighter Photo Reconnaissance Squadron Three (VMFP-3) organized the "Rhino Suite", a room containing a mural of the squadron mascot with a mock phallus as a drink dispenser.

b. On 6 and 7 September 1991 Petitioner attended the Symposium and visited the "Rhino Suite." On each occasion, Petitioner acted as a bartender for "a couple of hours" and became very intoxicated. Petitioner also stated that during these evenings he visited the room and observed 10 to 12 women simulate fellatio on the rhino in order to obtain a drink. Petitioner also said that he observed 2-3 women "deep throat" the rhino and marked the depth with a pen. In addition, during the course of the event several military and civilian women reported being sexually assaulted. A criminal investigation was conducted into the activities at the symposium, and a number of Marine Corps and Navy officers were identified as suspects.



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c. In 1993, the Marine Corps officers suspected of misconduct were brought before (then) LtGen [REDACTED] who had been designated as the consolidated disposition authority (CDA) for the Tailhook cases. Petitioner's case was considered by the CDA, who determined that the allegation was without merit and imposed no punishment. The CDA also recommended that Petitioner's promotion eligibility be restored and that he be considered for promotion along with his peers in the future.

d. In 1995, Petitioner was considered and selected by the FY 1996 Major USMC promotion Board. As Commandant of the Marine Corps (CMC), Gen Krulak recommended to the Secretary of the Navy (SecNav) and the President that the Petitioner's name be removed from the FY 1996 Major promotion list. SecNav concurred in the recommendation and the President removed Petitioner's name from the promotion list. The Petitioner resigned his commission effective 1 August 1995, and remained in the reserve component. Petitioner was then considered and selected by the FY 1997 Major USMCR Promotion Board. Following the recommendations of CMC and SecNav, the President again removed Petitioner's name from the FY 1997 USMCR Major promotion list.

#### 4. Analysis

a. Petitioner presents three arguments in support of his petition. First, he maintains that [REDACTED]'s recommendations in his memoranda of 22 September 1995 and 6 January 1996 to SecNav concerning removal of Petitioner's name from the FY96 Major USMC and the FY97 Major USMCR Promotion Board Report were false and misleading. In particular, Petitioner alleges that the omission of a verbatim recital of the CDA findings in these memoranda constitutes prejudicial error. Second, Petitioner maintains that recommendations made by [REDACTED] CMC were unfair in light of his previous actions as CDA. Third, Petitioner claims that his removal from the FY96 USMC and FY97 USMCR promotion lists for his conduct at the symposium was unfair compared to the treatment of one of the more senior officers at the event. None of these allegations provide a basis for the requested relief.

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b. Petitioner is correct that the memoranda of 22 September 1995 and 6 January 1996 did not recite verbatim [REDACTED] findings and recommendations as CDA. However, verbatim recitation of language from prior correspondence into subsequent memoranda is not required by law, regulation or fairness. CMC is permitted to make a recommendation concerning the fitness of Marine Corps officers for promotion. He did so. Both memoranda as a whole accurately convey that although LtGen [REDACTED] CDA did not believe that Petitioner committed an offense under the UCMJ, as CMC he believed that Captain [REDACTED] conduct fell far below the standards of a Marine major. There is nothing in this clear distinction that may have misled SecNav, as Petitioner argues.

c. Lt [REDACTED] CDA did not find that Petitioner violated the UCMJ. This finding, however, did not mean that Petitioner was automatically qualified for promotion, nor did it bind [REDACTED] as CMC to make a favorable promotion recommendation. As CMC, [REDACTED] reviewed Petitioner's conduct from a different perspective than while he was the CDA, and according to a different standard.

d. The decision in Petitioner's case to remove his name from the promotion list was based upon individualized consideration of the specific facts of his case. The removal process was correctly performed according to law and regulation. The disposition of another case with different facts is not relevant, and is not a basis for relief.

5. Conclusion. Accordingly, for the reasons noted, we recommend that the requested relief be denied.

[REDACTED]  
Assistant Head  
Military Law Branch  
Judge Advocate Division



2041-99

**DEPARTMENT OF THE NAVY**  
**HEADQUARTERS UNITED STATES MARINE CORPS**  
**2 NAVY ANNEX**  
**WASHINGTON, DC 20380-1775**

IN REPLY REFER TO:

1070  
JAM3  
10 JAN 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

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IN THE CASE OF CAPTAIN [REDACTED]  
USMCR

1. We are asked to provide an opinion on Petitioner's answer to our initial advisory opinion of 5 October 1999.

2. We continue to recommend that the requested relief be denied. Our analysis follows.

3. Background. On 3 May 1999, Petitioner filed an application with BCNR for removal from his Official Military Personnel File (OMPF) of all documents relating to his removal from the FY96 Major USMC and FY97 Major USMCR selection board reports. Petitioner also requested submission of the expunged record to the President for nomination and promotion to the grade of Major USMCR. Petitioner made three arguments in support of his application for relief. On 27 August 1999, we advised the Board that none of Petitioner's allegations provide a basis for relief. On 4 November 1999, Petitioner responded to our advisory opinion, reiterating arguments made in his 3 May 1999 application. Petitioner also raised the argument that the board must consider the disposition of the related case of [REDACTED] U.S. Marine Corps (Ret.) in deciding whether to grant relief in Petitioner's case. We rely on our previous opinion with respect to issues discussed therein. We comment briefly on the argument regarding Colonel [REDACTED] case.

4. Analysis. This argument is without merit. The removal process in Petitioner's case was performed correctly according to law and regulation. Moreover, the decision to remove Petitioner's name from the FY96 and FY97 selection board reports were based on facts unique to his case and record of service. Comparison of actions in this case to those in another case are neither required by statute or regulation nor appropriate given the unique circumstances presented by each case; therefore, such comparison does not further the interests of justice.

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USMCR

5. Conclusion. We continue to recommend that the relief be denied.

[REDACTED]  
M. [REDACTED] JR.  
Head, Military Law Branch  
Judge Advocate Division